Disclaimer

This workshop presentation is designed to educate and empower RCOs and community activists around neighborhood zoning issues.

The information shared in this workshop (1) is not provided in the course of and does not create or constitute an attorney-client relationship, (2) is not intended as a solicitation, (3) is not intended to convey or constitute legal advice, and (4) is not a substitute for obtaining legal advice from a qualified attorney.

You should not act upon any such information without first seeking qualified professional counsel on your specific matter. The hiring of an attorney is an important decision that should not be based solely upon workshop presentations.
Question one:

Where can you find the zoning classification of a property in Philadelphia?
Get the history of permits, licenses, and inspections at any address

Research real estate information including property values, zoning, and document archives

Get easy access to a variety of hard-to-find City resources

View recent activity around your address, such as crimes, 311 service requests, and more

Explore historical imagery and maps
Question Two:

What’s a zoning overlay and how can you find it there is an overlay for a particular address?
Answer

Described on page 5 of the Zoning Code quick guide
Question Three:

Where can you find evidence of how a property was zoning in the past?
atlas.phila.gov

- Get the history of permits, licenses, and inspections at any address
- Research real estate information including property values, zoning, and document archives
- Get easy access to a variety of hard-to-find City resources
- View recent activity around your address, such as crimes, 311 service requests, and more
- Explore historical imagery and maps
Question Four:

Why are some zoning permits given as of right and others are denied?
By Right / As-of-Right:
When the project proposal complies with all zoning provisions applicable to the property, an applicant can get a zoning permit from L&I “by-right” without any action by the Zoning Board, Planning Commission, or City Council. Certain large projects must go through an advisory Civic Design Review process.
What’s the difference between a zoning refusal and a zoning referral?
When the zoning code permits certain uses by special exception, L&I will issue a zoning referral.

When the proposed project does not conform to the zoning code L&I will issue a zoning refusal.
What’s the difference between a special exception and a variance?
By Special Exception:
The Zoning Code permits certain uses and development by special exception, which is granted by the Zoning Board if the project is compatible with the surrounding neighborhood.

By Variance:
Sometimes special circumstances prevent projects from conforming to the Zoning Code standards. In these instances, applicants must obtain a variance from the Zoning Board to deviate from the zoning standards. The Zoning Board will verify that there are special circumstances presenting an unnecessary hardship in complying with the Zoning Code.
Question Seven:

What’s the difference between a use variance and a dimensional variance?
“When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations. Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation.”

Question Eight:

How can you tell if there is a nonconforming use at a property?
Nonconformities
Many land uses, buildings, parking areas, lots, signs, and site improvements in the City do not meet the requirements of the Zoning Code either because they were established before the adoption of zoning, or they were legal when established but have become nonconforming due to later zoning changes. The Zoning Code regulates the continued existence, use, modification, and expansion of these nonconformities. Consult Section 14-305 of the Philadelphia Code for addition information.
Question Nine:

Does an organization have to be an RCO to protest a zoning application at the Zoning Board?
Zoning Board of Adjustment Regulations:

5.2.4. The Zoning Board may determine the order in which evidence shall be presented. Unless otherwise directed by the Board, the appellant’s evidence shall be presented first; thereafter other interested persons will be heard.

2.4 Interested Person.

The appellant and any person/entity who registered in writing before the Zoning Board on a form provided by the Board.
Who is allowed to testify before the ZBA?
Zoning Board of Adjustment Regulations:

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Question Eleven

Who is allowed to cross examine witnesses at the ZBA?
Question Twelve:

Who has the burden of proof in a special exception appeal?
(1) Specific Conditions of Use

The applicant shall have the initial duty of presenting evidence, and the burden of proof, that the proposed use meets the definition for a use permitted by special exception, that all dimensional standards are satisfied, and that the application complies with all the criteria and meets all the conditions applicable to the proposed use, including all applicable use specific standards.
(2) Specific Detrimental Impacts on the Neighborhood
The applicant shall have the initial duty of presenting objective evidence, and the burden of proof, that the grant of a special exception will not cause the following specific detrimental impacts to the neighborhood beyond that which normally might be expected from the proposed use:

(a) Congestion in the public streets or transportation systems;
(b) Overcrowding the land;
(c) Impairing an adequate supply of light and air to adjacent property;
(d) Burdening water, sewer, school, park, or other public facilities;
(e) Impairing or permanently injuring the use of adjacent conforming properties;
(f) Endangering the public health or safety by fire or other means; or
(g) Inconsistency with the Comprehensive Plan of the City.
(.3) General Detrimental Impacts on the Neighborhood

Once the applicant meets such initial duty and burden of proof the objectors if any shall have the duty of presenting objective evidence and the burden of proof that the proposed use is substantially likely to cause a detrimental impact on the health safety and welfare of the neighborhood exceeding that which normally might be expected from the proposed use. The objectors also may present evidence and have the burden of proof that the proposed use fails to conform with the purpose spirit and intent of this Zoning Code.
Question Thirteen

What does the applicant need to prove to convince the ZBA to grant a special exception?
Answer – part one

- that the proposed use meets the definition for a use permitted by special exception
- that all dimensional standards are satisfied, and that the application complies with all the criteria and meets all the conditions applicable to the proposed use, including all applicable use specific standards
that the grant of a special exception will not cause the following specific detrimental impacts to the neighborhood beyond that which normally might be expected from the proposed use:

(a) Congestion in the public streets or transportation systems;
(b) Overcrowding the land;
(c) Impairing an adequate supply of light and air to adjacent property;
(d) Burdening water, sewer, school, park, or other public facilities;
(e) Impairing or permanently injuring the use of adjacent conforming properties;
(f) Endangering the public health or safety by fire or other means; or
(g) Inconsistency with the Comprehensive Plan of the City.
What does the community need to prove to convince the ZBA to deny a special exception?
• that the proposed use is substantially likely to cause a detrimental impact on the health safety and welfare of the neighborhood exceeding that which normally might be expected from the proposed use.
• that the proposed use fails to conform with the purpose, spirit and intent of this Zoning Code.
Who has the burden of proof in a variance appeal?
Criteria for Approval.
The Zoning Board shall grant a variance only if it determines that the applicant has demonstrated that the criteria of this § 14-303(8)(e) (Criteria for Approval) have been met and that any applicable criteria in §§ 14-303(8)(f) (Additional Criteria for Floodplain Variances) through 14-303(8)(h) (Additional Criteria for Height Variances Near the Airport) have been met. Otherwise, the Zoning Board shall deny the variance.
What does the applicant need to prove to convince the ZBA to grant a variance?
The Zoning Board shall grant a variance only if it finds each of the following criteria are satisfied:

The denial of the variance would result in an unnecessary hardship. The applicant shall demonstrate that the unnecessary hardship was not created by the applicant and that the criteria set forth in § 14303(8)(e)(.2) (Use Variances) below, in the case of use variances, or the criteria set forth in § 14-303(8)(e)(.3) (Dimensional Variances) below, in the case of dimensional variances, have been satisfied;
(.b) The variance, whether use or dimensional, if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the use or dimensional regulation in issue;

(.c) The grant of the variance will be in harmony with the Purpose and spirit of this Zoning Code

(.d) The grant of the variance will not substantially increase congestion in the public streets, increase the danger of fire, or otherwise endanger the public health, safety, or general welfare;
(e) The variance will not substantially or permanently injure the appropriate use of adjacent conforming property or impair an adequate supply of light and air to adjacent conforming property;

(f) The grant of the variance will not adversely affect transportation or unduly burden water, sewer, school, park, or other public facilities;
Answer – part four

(.g) The grant of the variance will not adversely and substantially affect the implementation of any adopted plan for the area where the property is located; and

(.h) The grant of the variance will not create any significant environmental damage, pollution, erosion, or siltation, and will not significantly increase the danger of flooding either during or after construction, and the applicant will take Measures to minimize environmental damage during any construction.
Question Seventeen:

What does the community need to prove to convince the ZBA to deny a variance?
The objectors need to demonstrate that the applicant has not met only one of the many criteria for the grant of a variance.
Question Eighteen:

What is the ZBA Cheat Sheet?
### Special Exception:

- **GRANTED:** Met all requirements of Section 14-303(7)(e)

- **DENIED:**
  - Proposal will cause the following detrimental impacts beyond that which normally might be expected
    - Congestion in the public streets or transportation systems
    - Overcrowding the land
    - Impairment to inadequate supply of light and air to adjacent property
    - Burden to water, sewer, school, park, or other public facilities

### Use Variance:

- **GRANTED:** Met all requirements of Section 14-303(8)(e)(1) & (2)

- **DENIED:**
  - No unnecessary hardship because:
    - No unique physical circumstances/conditions
    - Not necessary for viable economic use of the property
    - Alters the essential character of the neighborhood
    - Impairs the appropriate use or development of adjacent property
    - Detrimental to public welfare
    - Can be cured by dimensional

### Dimensional Variance:

- **GRANTED:** Met all requirements of Section 14-303(8)(e)(1) & (3)

- **DENIED:**
  - No unnecessary hardship (consider economic detriment, financial burden, and character of surrounding neighborhood)
  - Not the minimum to afford relief
  - Not in harmony with the purpose/spirit of the Code
  - Increases congestion, danger to fire, or endangers the public health, safety, welfare
  - Injures appropriate use or impacts an adjacent supply of light and air
A Smart Zoning Strategy
What is Strategy?

• Strategy is your overall plan to turn the resources you have into the power you need to win the change you want.

• Some like to think of it this way – if tactics are the tools, targets the nails, and goals the finished building, then strategy is carpentry.
What is Strategy?

• Every Strategy Needs an Overall Vision and Specific Goals
• Your Zoning Agenda is Your RCOs Goals and Vision for Your Community
• Your Zoning Agenda Gives Your RCO a Framework to Evaluate Each Zoning Project – It is the WHY Part of Your Strategy
Examples of a Zoning Agenda – Queen Village Neighbors

- Keep height within close to allowable limits
- Eliminate garages from fronts of houses
- Preserve historic feel of queen village (scale and texture)
- Encourage cafes, restaurants and outdoor seating in more commercial areas
- Commercial – no creeping south street near residences
- Welcome neighborhood types of commercial businesses
- Dry cleaners are problem for drop off and pick up
- Daycare centers – problem with drop off and pick up
- No loading zones to preserve more on street parking
Examples of a Zoning Agenda – NOWAC

- Adhere to height limits – no to 4 or more stories
- Adhere to set backs in traditional 2 story buildings and 2 story blocks
- For CMX-1 corner properties – keep commercial on first floor only
- No development with displacement:
  - look at where market rate housing is placed
  - oppose if it leads to displacement
- Support commercial uses that bring in local jobs and pay a living wage
- Oppose commercial uses that pay low wages
- Oppose dog kennels
Developing a Zoning Process

• Every Zoning Strategy Needs a Plan for How to Achieve Its Agenda (Goals)
• Your Zoning Process is the HOW Part of a Winning Strategy
Elements of a Zoning Process – part one

- When, Where and How Your Hold RCO Meetings
- How You Communicate with Zoning Applicants and What Materials You Require Applicants to Submit in Advance of Your RCO Meeting
- How You Communicate with the District Councilmember
- How You Communicate with the Planning Commission and Zoning Board of Adjustment
Elements of a Zoning Process – part two

• How to Survey Your Community to Find Out the Community’s Views about Zoning Issues
• How To Educate the Community About Your Zoning Agenda, Your Zoning Process and the Role of an RCO
Surveying your Community

Survey Monkey - https://www.surveymonkey.com
How to Communicate with Developers

- Focus on your Zoning Strategy
- Look for Openings to Negotiate
- Don’t Reveal Your Whole Agenda
- Invite Allies to Validate your Concerns
• Focus on your Zoning Strategy
• Cultivate your Relationship with the Elected Official
• Mobilize Affected Community Members to Validate your concerns
• Make Specific Asks, Hold Elected Officials Accountable
How to Communicate with the Zoning Board

• Focus on the Zoning Code to state your concerns – keep your message about the Zoning Code and use the cheat sheet!
• Focus on facts, not emotions
• Be specific, not vague
• Mobilize the Community to Show Up at the Zoning Hearing
• Invite Validators to Amplify your Message
Case Study
318 N. 42nd Street

West Powelton / Saunders Park RCO
Victory at ZBA and
Victory at Court of Common Pleas
Site Plan for 318 N. 42nd Street
Renderings of 318 N. 42nd Street

Character Sketches

Bird's Eye look North: Powelton

Bird's Eye look South: 42nd St

Bird's Eye look West: 42nd St
SUBMISSION OF WEST POWELTON/SAUNDERS PARK RCO AND TWENTY SEVEN NEAR NEighbors IN OPPOSITION TO APPLICATION FOR SEVEN MULTI-FAMILY DWELLINGS ON A PARCEL ZONED FOR ONLY ONE SINGLE FAMILY DWELLING AT 318 N 42ND STREET

APPLICANT: NORTH 42ND STREET LLC
LOCATION: 318 N 42ND STREET
CALENDAR NUMBER: 29951
DATE OF SPECIAL HEARING: OCTOBER 17, 2017

LIST OF EXHIBITS

1. DEED WITH RESTRICTIVE COVENANT REQUIRING PROPERTY OWNER TO DEVELOP ONLY ONE SINGLE FAMILY DWELLING
2. ENGINEERING REPORT OF THOMAS J. HALLIWELL, P.E.
3. OPPOSITION LETTERS FROM:
   a. DREXEL UNIVERSITY
   b. STATE REPRESENTATIVE VANESSA LOWERY-BROWN
   c. COUNCILWOMAN JANNIE L. BLACKWELL
   d. COORDINATING RCO PEOPLE’S EMERGENCY CENTER
   e. RCO WEST POWELTON/SAUNDERS PARK
4. PETITIONS OF OPPOSITION SIGNED BY ALL BUT ONE NEAR NEIGHBOR IN JAN/FEB 2017 AND SEPT/OCT 2017
5. DOCUMENTATION OF SINGLE FAMILY CHARACTER OF NEIGHBORHOOD
6. HISTORIC SINGLE FAMILY USE OF THIS PROPERTY
7. PHOTOGRAPHS
8. RECENT ZONING AND USE PERMIT ISSUED TO APPLICANT GROUP G, LLC FOR ONE SINGLE FAMILY DWELLING
9. HISTORY OF CODE VIOLATIONS AT APPLICANT’S EXISTING RESIDENTIAL PROPERTIES ON THE SAME BLOCK
10. COMMUNITY MEETINGS CONVENED FOR 318 N 42ND STREET
Major New Zoning Legislation Currently Before City Council

- Resolution No. 190395 Creates a New City Council Zoning Code Commission
- Bill No. 190553 Requires Community Benefit Agreements for Major Development Projects Receiving City Financial Assistance
“It is time to revisit what works in our Zoning Code, what needs improvement, and what no longer suits the needs of our City,” Council President Clarke agreed. “The persistently high rate at which use variances are granted by the Zoning Board of Adjustment is an area of particular concern. The people who choose to call Philly home, who help make our City an increasingly attractive and vibrant place to live and work, deserve predictability with regard to neighborhood development and for their needs to be heard and respected.”
Examples of voluntary community benefits:

- (1) Support of educational programs, such as those in the City's high schools, community colleges and other educational institutions;
- (2) Actively supporting educational activities that provide employment opportunities for residents of the Host Community;
New Legislation Requires Community Benefits Agreements For Developers Receiving City Financial Assistance

• (3) Providing Contractors in the Host Community with technical assistance or other relevant training opportunities;

• (4) Hosting Contractor information and networking sessions about upcoming contracting opportunities;

• (5) Providing employment and career mentoring opportunities for youths who reside in the Host Community;
New Legislation Requires Community Benefits Agreements For Developers Receiving City Financial Assistance

- (6) Actively promoting opportunities for investment in the Development Project;
- (7) Providing recreational activities, parks and affordable housing in the Host Community;
- (8) Supporting neighborhood improvements in the Host Community, including blight removal, etc.;
New Legislation Requires Community Benefits Agreements For Developers Receiving City Financial Assistance

• (9) Unbundling of construction work into bid sizes that allow small businesses in the Host Community to compete;

• (10) Providing access to bonding, financing, insurance and other types of capacity building assistance; and

• (11) Commitments to meet periodically for Host Community stakeholders to provide input and comment on the development project
Kagan Sounds New Alarm as Supreme Court Scraps Another Precedent

"Under cover of overruling 'only' a single decision, today's opinion smashes a hundred-plus years of legal rulings to smithereens," Kagan wrote in her dissent. Chief Justice Roberts accused the dissent of making "extreme assertions."

By Tony Mauro | Originally published on National Law Journal (nationallawjournal) | June 21, 2019

Ruling in an important takings case, the U.S. Supreme Court on Friday overturned

U.S. Supreme Court Justice Elena Kagan. Credit: Diego M. Radzinschi / NLJ